

AMENDING SECTION 309 (c) OF COMMUNICATIONS ACT OF 1934,
WITH RESPECT TO THE TIME WITHIN WHICH THE FEDERAL
COMMUNICATIONS COMMISSION MUST ACT ON PROTESTS FILED
THEREUNDER

MAY 13, 1953.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. O'HARA of Minnesota, from the Committee on Interstate and
Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 4558]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 4558) to amend section 309 (c) of the Communications Act of 1934, with respect to the time within which the Federal Communications Commission must act on protests filed thereunder, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of this legislation is to extend the time within which the Federal Communications Commission must act on a protest filed in accordance with the provisions of section 309 (c) of the Communications Act of 1934, as amended, from a period of 15 days, as now provided in the law, to a period of 30 days.

Section 309 of the Communications Act of 1934 was amended by Public Law 554, 82d Congress, to provide a new procedure whereby parties in interest may file with the Commission a protest against a grant of any radio authorization which was made by the Commission without a hearing, within 30 days after such grant, and may request a hearing on whether such grant is in the public interest. The statute provides that the protest shall contain allegations of fact showing the protestant's standing as a party in interest, and specify with particularity the facts, matters, and things upon which the protestant is relying. The Commission is required, within 15 days from the date of the filing of such protest, to enter findings as to whether the protest meets the foregoing requirements, and, if it so finds, to designate the application for hearing.

The committee heard detailed testimony from the Chairman of the Federal Communications Commission with regard to the problems

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arising under section 309 (c) of the Federal Communications Act, as amended. To date, 18 protests have been filed under the new procedure. Experience with these protests has demonstrated that the 15-day period allowed for Commission action on such protests is inadequate.

The filing of a protest seriously affects the rights of the party or parties whose application for a radio authorization was granted by the Commission without a hearing. A finding of the Commission that a protest filed against such grant meets the statutory requirements has the effect of postponing the effective date of the Commission's original authorization to the date on which the Commission's decision on such authorization, reached after a hearing, becomes effective. The statute requires the Commission to expedite the hearing and determination of such protest cases. However, the crowded condition of the Commission's hearing calendar may result in a postponement of the effective date of the original grant for a substantial period of time.

Furthermore, several of the protests which have been filed so far have presented serious and complex questions of law and fact for the Commission's determination. The Commission has felt, therefore, that the grantee's rights might be seriously jeopardized if the grantee was not afforded an opportunity to study the issues raised by the protestant and to file with the Commission a reply to the issues raised. The statutory requirement, however, that the Commission act on any such protest within 15 days from the date of the filing of the protest has operated to preclude such opportunity. Under these circumstances, the Commission has been required to determine important questions of fact and law which substantially affect the rights of the original grantee, almost entirely on the basis of ex parte allegations advanced by the protestant.

The committee feels, as does the Commission, that this situation is not consistent with the public interest. While Congress intended that the Commission act promptly on any protest filed in accordance with section 309 (c), Congress did not mean to preclude an opportunity for the party or parties adversely affected by such protest from answering the issues of law and fact raised by a protestant. The committee believes that the difficulties which are inherent in making decisions on such protests, and the serious effect which these decisions have on the rights of the original grantee, certainly justify an extension from 15 to 30 days of the period within which the Commission must act on such protests.

The committee knows of no opposition to the proposed extension of time.

The following letter of the Federal Communications Commission, dated March 13, 1953, addressed to the Speaker of the House of Representatives, recommending enactment of this legislation, was referred to this committee:

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., March 12, 1952.

HON. JOSEPH W. MARTIN, JR.,
Speaker, House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: The Federal Communications Commission wishes to recommend for the consideration of the House of Representatives, enactment of legislation amending section 309 (c) of the Communications Act of 1934, as

amended, to extend the time within which the Commission must act on a protest, from 15 days, as now provided, to a period of 30 days.

Section 309 of the Communications Act was amended by Public Law 554 of the 82d Congress (66 Stat. 715), to provide a procedure whereby parties in interest were enabled to protest a grant of any radio authorization made without hearing, within 30 days after the grant and to request a hearing thereon. The statute requires the protest to contain allegations of fact showing the protestant to be a party in interest and must specify the facts, matters, and things relied upon. The Commission is required, within 15 days from the date of filing the protest, to enter findings as to whether the protest meets the foregoing requirements, and if it so finds, to designate the application involved for hearing.

Experience with the various protests which have been filed since the new procedure became effective has demonstrated conclusively that the 15-day period allowed for Commission action on a protest is inadequate. Many of the protests present serious and complex questions of law and fact for the Commission's determination and it has proved extremely difficult for the Commission and its staff to give these questions the comprehensive consideration which they warrant within the time fixed by the statute or to make any extensive investigation to determine the truth of the facts alleged. Of equal, if not even greater importance, is the fact that the 15-day limitation has made it virtually impossible for the Commission to give any consideration to oppositions to protests which may be filed by the grantee or by any other interested party. This has meant that the Commission has been required to determine important questions of fact and law substantially affecting the rights of third parties almost entirely upon the *ex parte* allegations of the protestant.

It is not believed that this result is consistent with the public interest or that it was intended by Congress when it fixed a period within which the Commission must act on a protest. And it is believed that by extending the period to 30 days, as we are here proposing, that the congressional objective of insuring an early Commission determination as to the validity of the protest, will be adequately secured, and the difficult situation presented by the existing language will be somewhat improved.

Accordingly it is respectfully recommended that section 309(c) of the Communications Act, as amended, be amended by striking the word "fifteen" in the fourth sentence of the section, and the insertion, in lieu thereof, of the word "thirty."

The consideration of this recommendation by the House of Representatives will be greatly appreciated and the Commission has been informed by the Bureau of the Budget that it has no objection to the submission of this recommendation.

By direction of the Commission.

PAUL A. WALKER, *Chairman*.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

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SEC. 309. * * *

(c) When any instrument of authorization is granted by the Commission without a hearing as provided in subsection (a) hereof, such grant shall remain subject to protest as hereinafter provided for a period of thirty days. During such thirty-day period any party in interest may file a protest under oath directed to such grant and request a hearing on said application so granted. Any protest so filed shall contain such allegations of fact as will show the protestant to be a party in interest and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. The Commission shall, within [fifteen days] *thirty days* from the date of the filing of such protest, enter findings as to whether such protest meets the foregoing requirements and if it so finds the application involved shall be set for hearing

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upon the issues set forth in said protest, together with such further specific issues, if any, as may be prescribed by the Commission. In any hearing subsequently held upon such application all issues specified by the Commission shall be tried in the same manner provided in subsection (b) hereof, but with respect to all issues set forth in the protest and not specifically adopted by the Commission, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant. The hearing and determination of cases arising under this subsection shall be expedited by the Commission and pending hearing and decision the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the Commission's decision after hearing, unless the authorization involved is necessary to the maintenance or conduct of an existing service, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

